

Message Text

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DRAFTED BY L/OES/BHOXMAN:SCH

APPROVED BY S/AL - AMB. LEARSON

ARA - MR. FISHLOW

S/SO:DLMACK

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TO AMEMBASSY BRASILIA IMMEDIATE

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E.O. 11652: GDS

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SUBJECT: LAW OF THE SEA AND THE SECRETARY'S

VISIT TO BRASILIA

FOR THE AMBASSADOR FROM AMB. LEARSON AND MR. FISHLOW

1. YOUR COMMENTS WOULD BE APPRECIATED ASAP ON THE FOLLOWING FIRST DRAFT OF A MEMORANDUM TO THE SECRETARY, AND THE UNDERLYING IDEA OF HIS RAISING THESE ISSUES WITH BRAZIL.

2. BEGIN TEXT: YOUR CONSULTATIONS IN BRAZIL (A KEY LEADE IN,THE LOS NEGOTIATIONS)-CAN PROVIDE AN IMPORTANT OPPORTU- NITY FOP THE UNITED STATES TO WRAP UP THE LAW OF THE SEA TREATY THIS YEAR. YOUR VISIT WILL COME IMMEDIATELY BEFORE GROUP OF 77 MEETINGS TO PREPARE FOR THE CRITICAL SPRING SESSION OF THE LAW OF THE SEA CONFERENCE. SEVERAL OF THE MAJOR OUTSTANDING ISSUES ARE DIRECTLY RELATED TO BROAD POLICY QUESTIONS WHICH WILL BE THE SUBJECT OF YOUR CONSUL- TATIONS, INCLUDING INTERNATIONAL COMMODITIES PROBLEMS, SECRET

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HEMISPHERIC SECURITY AND BRAZIL'S WORLD ROLE. WE BELIEVE THAT BRAZIL MAY BE RECEPTIVE TO THE LINKAGE OF THESE GENERAL AREAS OF CONCERN WITH BILATERAL COOPERATION IN THE LOS CONFERENCE. A SUCCESSFUL MUTUAL EFFORT TO CONCLUDE A LAW

OF THE SEA TREATY ACCEPTABLE TO BOTH NATIONS WOULD NOT ONLY BENEFIT OUR BILATERAL RELATIONS WITH BRAZIL BUT THROUGHOUT THE HEMISPHERE. MOREOVER, IT IS IMPORTANT THAT BRAZIL OR PERU REPORT TO THEIR GROUP OF 77 COLLEAGUES YOUR STRONG

PERSONAL INTEREST IN WRAPPING UP THE CONFERENCE ON TERMS WHICH ACCOMMODATE U.S. AND LDC OBJECTIVES.

3. BACKGROUND: THE BRAZILIAN REPRESENTATIVE IN THE DEEP SEABED PART OF THE LAW OF THE SEA NEGOTIATIONS HAS BEEN UNUSUALLY EFFECTIVE AND FORCEFUL. WORKING IN CLOSE COOPERATION WITH THE REPRESENTATIVE OF PERU, HE HAS EXERTED STRONG INFLUENCE ON THE GROUP OF 77 AND HAS SUCCESSFULLY WORKED TO HAVE THE LDC'S ADOPT EXTREME POSITIONS WHICH WERE IN OPPOSITION TO U.S. INTERESTS. SIMILARLY, BRAZIL HAS BEEN AN EFFECTIVE ADVOCATE FOR COASTAL STATE CONTROL OVER SCIENTIFIC RESEARCH IN THE ECONOMIC ZONE AND THE EMPLACEMENT OF ALL INSTALLATIONS ON THE CONTINENTAL SHELF, WHICH, OF COURSE, WOULD INCLUDE U.S. SUBMARINE DETECTION DEVICES. UNTIL NOW, BRAZIL AND PERU HAVE ENGAGED IN A VARIETY OF DELAYING TACTICS TO STALL THE LOS NEGOTIATIONS IN THE HOPE THAT THEY COULD CONVERT THE ECONOMIC ZONE INTO SOMETHING CLOSER TO A TERRITORIAL SEA.

4. RECENTLY, HOWEVER, BRAZIL HAS ACTIVELY ASSUMED A CONSTRUCTIVE ROLE IN THE DEEP SEABED NEGOTIATIONS AND SHOWN A DEFINITE DESIRE TO EXPEDITE CONCLUSION OF THE TREATY. WE BELIEVE THIS NEW ROLE ARISES FROM BRAZIL'S RECOGNITION THAT ITS INTERESTS AS A MANGANESE PRODUCER COULD BE HARMED IF DEEP SEABED MINING PROCEEDS IN THE ABSENCE OF A TREATY. THEIR INCENTIVE TO COMPROMISE IS THEIR FEAR THAT U.S. UNILATERAL DEEP SEABED MINING LEGISLATION WILL NOW BE PASSED BY CONGRESS IN LIGHT OF THE RECENT FISHERIES ACTION WE ALSO HAVE REASON TO BELIEVE THAT BRAZIL HAS A STRONG INTEREST IN ENGAGING IN DEEP SEABED MINING ITSELF IN PARTNERSHIP WITH AN INDUSTRIALIZED COUNTRY (SEE ATTACHMENT). THUS, IT APPEARS TO HAVE BEGUN TO SEE ITS INTEREST

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ESTS IN THE DEEP SEABED NEGOTIATIONS AS MORE COMPATIBLE WITH THOSE OF THE U.S.

5. SUGGESTED SCENARIO:

(1) IN YOUR OPENING CONVERSATIONS, YOU WOULD REFER TO THE SIGNATURE OF THE COFFEE AGREEMENT, GENERAL PROBLEMS OF COMMODITY ARRANGEMENTS, MUTUAL SECURITY INTERESTS IN DEALING WITH POTENTIAL NAVAL THREATS IN THE SOUTH ATLANTIC AS A WHOLE, AND THE NEED TO WRAP UP THE LAW OF THE SEA CONFERENCE IN 1976 IN A MANNER THAT LINKS THESE FOREGOING ISSUES.

(2) IN THE COURSE OF DISCUSSING COMMODITIES, YOU WOULD INDICATE A GENUINE U.S. WILLINGNESS TO CONSIDER COMMODITY ARRANGEMENTS ON A CASE-BY-CASE BASIS WHERE THEY

ARE ECONOMICALLY JUSTIFIED AND WOULD SERVE THE INTERESTS OF ALL CONCERNED, CITING THE COFFEE AGREEMENT AS AN EXAMPLE. YOU WOULD EXPRESS THE VIEW THAT IN LIGHT OF THIS POLICY, IT WOULD BE IN OUR MUTUAL INTERESTS TO BREAK THE DEADLOCK IN THE LOS CONFERENCE ON THE DEEP SEABEDS ISSUE, AND WRAP UP A COMPREHENSIVE LOS TREATY THIS YEAR, AS IT MIGHT BE MORE DIFFICULT FOR THE U.S. TO COOPERATE AGAINST THE BACKGROUND OF DOMESTIC DEEP SEABED MINING LEGISLATION. THE BASIC SETTLEMENT WE WOULD WORK FOR WOULD INCLUDE ADEQUATE ASSURANCES REGARDING BRAZIL'S INTEREST IN THE COMMODITY PROBLEM AND U.S. AND BRAZILIAN INTEREST IN GUARANTEED ACCESS TO SEABED MINERALS THAT CANNOT BE IMPAIRED BY AN UNMANAGEABLE ORGANIZATION.

(3) IN THE COURSE OF DISCUSSING OUR MUTUAL SECURITY INTERESTS IN THE SOUTH ATLANTIC, YOU WOULD STRESS THAT BRAZIL'S FUTURE STRATEGIC INTERESTS WILL NOT BE LIMITED JUST TO AREAS OFF BRAZIL'S COAST. OUR MUTUAL CAPABILITY TO DERIVE INFORMATION ABOUT THE SOUTH ATLANTIC AS A WHOLE IS IMPORTANT. WE SEEK BRAZIL'S COOPERATION IN THE LOS CONFERENCE IN ASSURING THAT COASTAL STATE JURISDICTION IN THE ECONOMIC ZONE AND ON THE CONTINENTAL SHELF
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DOES NOT RESTRICT OUR SUBMARINE DETECTION CAPABILITY AND UNDULY RESTRICT SCIENTIFIC RESEARCH. NEITHER BRAZIL NOR THE U.S. CAN COUNT ON THE COOPERATION OF OTHER COASTAL STATES IF THEY CONTROL SUCH ACTIVITIES. IN THIS CONTEXT, YOU WOULD INQUIRE IF BRAZIL IS INTERESTED IN INCREASED BILATERAL COOPERATION IN SUBMARINE DETECTION IN THE SOUTH ATLANTIC. SHOULD BRAZIL COUNTER BY CITING THE SOVIET INTELLIGENCE THREAT, YOU CAN NOTE THAT IT IS BETTER IF WE CAN SEE WHAT THE SOVIETS ARE DOING (WHICH IS THE CASE WHEN THEY MASK INTELLIGENCE AS SCIENCE) AND THAT THE REAL ANSWER IS TO IMPROVE OUR PRACTICAL CAPABILITIES, NOT OUR THEORETICAL LEGAL RIGHTS.

(4) YOU WOULD RECOGNIZE THAT TO BE EFFECTIVE, BILATERAL UNDERSTANDINGS TO BE WORKED OUT FOR CONCLUDING THE LOS CONFERENCE THIS YEAR SHOULD BE KEPT SECRET, AND WE SHOULD EACH SO INSTRUCT OUR NEGOTIATORS. AT THE SAME TIME, WE WOULD EACH WORK WITH OUR CLOSE COLLEAGUES IN THE LOS CONFERENCE TO SHIFT POSITIONS TOWARD THE SUBSTANCE OF OUR MUTUAL UNDERSTANDINGS. IN THIS CONNECTION, IT IS IMPORTANT THAT BRAZIL MAKE A HIGH-LEVEL DEMARCHE TO PERU IN AN ATTEMPT TO PREVENT THEM FROM UPSETTING THE PACKAGE IN THE GROUP OF 77.

6. RESOURCE INTERESTS: ADDITIONAL BACKGROUND. IN A NUMBER OF AREAS OF NEGOTIATION, SIGNIFICANT PROGRESS WAS MADE AT THE LAST SESSION OF THE LOS CONFERENCE IN GENEVA

AND DURING THE INTERSESSIONAL PERIOD. THE OPPORTUNITY EXISTS OF SUCCESSFULLY CONCLUDING THE SUBSTANTIVE NEGOTIATIONS ON THE MAJOR RESOURCE AND SECURITY ISSUES IN 1976, PROVIDED A NUMBER OF CRITICALLY IMPORTANT QUESTIONS DO NOT PREVENT AGREEMENT. THE MAJOR OBSTACLE TO A SATISFACTORY OVERALL AGREEMENT IS THE NEGOTIATION ON THE DEEP SEABED REGIME AND MACHINERY. FOR SEVERAL YEARS, THERE HAS BEEN LITTLE, IF ANY, MEANINGFUL NARROWING OF DIFFERENCES ON THIS ISSUE, DESPITE THE FACT THAT THE UNITED STATES MADE EFFORTS AT COMPROMISE AT THE GENEVA SESSION OF THE LOS CONFERENCE. THE TREATY TEXT ON DEEP SEABEDS PRESENTLY BEFORE THE CONFERENCE IS UNACCEPTABLE TO THE U.S. AS IT CONTAINS PROVISIONS HARMFUL TO OUR MINERAL
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RESOURCE AND OTHER ECONOMIC INTERESTS AND POTENTIALLY HARMFUL TO SOME OF OUR SECURITY CONCERNS.

7. YOUR MONTREAL SPEECH ON THE LAW OF THE SEA IN AUGUST 1975, DELIVERED A FIRM MESSAGE TO THE LDC'S THAT WE WOULD CONTINUE TO BE REASONABLE IN THE DEEP SEABED NEGOTIATIONS, BUT THAT THEY COULD NOT EXPECT THE U.S. TO SACRIFICE ITS RESOURCE INTERESTS IN THIS AREA. DURING THE SUBSEQUENT INTERSESSIONAL PERIOD, THERE HAVE BEEN SIGNS OF GROWING FLEXIBILITY AMONG THE DEVELOPING COUNTRIES IN GENERAL AND INDICATIONS OF WILLINGNESS TO EXPLORE COMPROMISE SOLUTIONS. THIS HAS BEEN PARTICULARLY EVIDENT AT A JUST-CONCLUDED INTERSESSIONAL MEETING ON THE DEEP SEABED ISSUES IN NEW YORK, WHERE, FOR THE FIRST TIME, DEVELOPING COUNTRY REPRESENTATIVES LED BY BRAZIL HAVE AGREED TO TREATY ARTICLES WHICH CONTAIN IMPORTANT CONCESSIONS TO U.S. SECURITY AND ECONOMIC INTERESTS. WHILE THESE DEVELOPMENTS ARE ONLY TENTATIVE AND A NUMBER OF MAJOR ISSUES REMAIN UNRESOLVED, WE ARE ENCOURAGED BY THE INDICATIONS THAT A NUMBER OF DEVELOPING COUNTRIES NOW HAVE THE POLITICAL WILL TO TRY TO MEET OUR VITAL CONCERNS IN ORDER TO ACHIEVE A DEEP SEABED AGREEMENT WHICH WE CAN ACCEPT.

8. THE BRAZILIAN REPRESENTATIVE IN THESE NEGOTIATIONS HAS PLAYED THE CRITICAL ROLE IN DEVELOPING THESE COMPROMISES. MOREOVER, HE HAS PRIVATELY RAISED WITH US ON A PERSONAL BASIS AN EXTREMELY INTERESTING COMPROMISE PACKAGE ON THE KEY ECONOMIC ASPECTS OF THE DEEP SEABED NEGOTIATIONS. HE HAS INDICATED TO US THAT THE QUID PRO QUO FOR U.S. ACCEPTANCE OF THIS PACKAGE WOULD BE BRAZIL'S USE OF ITS INFLUENCE WITHIN THE GROUP OF 77; TO HAVE MOST OF THE U.S. POSITIONS REGARDING THE REGIME AND INTERNATIONAL ORGANIZATION FOR THE DEEP SEABED ACCEPTED

BY THE LDC'S. THIS PRIVATE PROPOSAL INCLUDES THE FOLLOWING POINTS:

POINTS:

-- THE INTERNATIONAL SEABED RESOURCE AUTHORITY WOULD BE EMPOWERED TO PARTICIPATE IN ANY RELEVANT COMMODITY ARRANGEMENTS IN WHICH ALL AFFECTED STATES PARTICIPATE
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AS THE PRINCIPAL MEANS OF PROTECTING LDC PRODUCERS OF NICKEL, COPPER, MANGANESE AND COBALT FROM ECONOMIC CONSEQUENCES OF DEEP SEABED MINING.

-- 50 OF THE AREA OF THE DEEP SEABED WOULD BE RESERVED FOR DIRECT MINING BY THE AUTHORITY OR LDC'S, WHILE THE OTHER 50 WOULD BE OPENED TO ALL STATES AND THEIR NATIONALS

-- FOR THE INITIAL 15-YEAR PERIOD, DEEP SEABED MINING WOULD BE LIMITED TO THE GROWTH SEGMENT IN WORLD NICKEL DEMAND. (THE U.S. HAS PUBLICLY STATED THAT IT IS HIGHLY UNLIKELY THAT SUCH MINING WOULD EXCEED THAT GROWTH SEGMENT IN THE FORESEEABLE FUTURE.)

-- COMPENSATION WOULD BE PROVIDED LDC PRODUCERS SEVERELY HURT BY DEEP SEABED MINING.

9. MAJOR ASPECTS OF THESE FOUR POINTS ARE NOW BEGINNING TO APPEAR IN NEW DRAFT TREATY TEXTS THAT EMERGED WITHOUT COMMITMENT DURING RECENT DEEP SEABED NEGOTIATIONS IN NEW YORK. WE HAVE NOT YET AGREED TO THE BRAZILIAN REPRESENTATIVE'S PROPOSAL BUT OUR PRELIMINARY EXAMINATION INDICATES THAT MUCH OF IT WOULD PROBABLY BE ACCEPTABLE TO US AS PART OF AN OVERALL SATISFACTORY AGREEMENT, ALTHOUGH THE FINAL DECISION MAY HAVE TO BE MADE BY THE PRESIDENT OVER SOME OBJECTIONS OF SOME ECONOMIC AGENCIES.

10. BEFORE COMMITTING THEMSELVES TO THIS COMPROMISE PACKAGE, WE UNDERSTAND THE BRAZILIANS WOULD LIKE TO SEE SOME INDICATION FROM US THAT WE COULD AGREE, AT LEAST IN PRINCIPLE, TO NEGOTIATE COMMODITY ARRANGEMENTS FOR THESE METALS. THEY DO NOT EXPECT A SPECIFIC U.S. COMMITMENT TO ENTER INTO AGREEMENTS. IF YOU COULD PERSUADE BRAZIL THAT THE UNITED STATES IS PREPARED TO CONSIDER ANY COMMODITY ARRANGEMENT, WHICH CAN BE ECONOMICALLY JUSTIFIED AND IS IN THE INTERESTS OF THE COUNTRIES CONCERNED, THEY MAY THEMSELVES AGREE TO SELL THE AS YET "PERSONAL" PROPOSAL TO THE GROUP OF 77. THIS POINT CAN BE EMPHASIZED IN CONNECTION WITH OUR CONTEMPLATED ACCEPTANCE OF THE COFFEE AGREEMENT, WHICH DEMONSTRATES OUR GOOD FAITH IN THE COMMO-

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DITIES AREA.

11. DEFENSE INTERESTS: ADDITIONAL BACKGROUND. ANOTHER AREA OF THE LAW OF THE SEA NEGOTIATIONS IN WHICH BRAZIL HAS BEEN A STRONG OPPONENT OF THE UNITED STATES HAS BEEN ON THE QUESTION OF THE RIGHTS OF A COASTAL STATE TO PROHIBIT OR CONTROL THE INSTALLATION OF NON-ECONOMIC DEVICES ON ITS CONTINENTAL SHELF. THE UNITED STATES HAS SOUGHT TO RETAIN FREEDOM TO DEPLOY SUCH DEVICES AS THIS IS ESSENTIAL FOR OUR GLOBAL SUBMARINE DETECTION SYSTEM. THIS ISSUE IS ONE OF THE MOST SENSITIVE IN THE LOS NEGOTIATIONS AND IF WE ARE NOT SUCCESSFUL IN RETAINING THIS RIGHT, THE NEGOTIATIONS COULD FAIL.

12. IN A RELATED ISSUE, THE BRAZILIANS HAVE BEEN HIGHLY VOCAL IN OPPOSING FREEDOM OF SCIENTIFIC RESEARCH NOT ONLY IN THE COASTAL AREAS OF THE ECONOMIC ZONE BUT IN THE DEEP SEABED AS WELL. WE BELIEVE THEIR CONCERN ON THE SCIENTIFIC RESEARCH ISSUE IS MOTIVATED BY A FEAR THAT IT WILL BE USED AS A SUBTERFUGE FOR SOVIET INTELLIGENCE GATHERING OPERATIONS. IT WOULD BE HIGHLY BENEFICIAL TO U.S. OBJECTIVES IN THE LAW OF THE SEA NEGOTIATIONS IF BRAZIL COULD WITHDRAW ITS OPPOSITION TO THE UNITED STATES ON THESE ISSUES, OR AT THE VERY LEAST MODERATE ITS STAND.

13. WE BELIEVE THAT A VERY USEFUL APPROACH WOULD BE TO RAISE THESE ISSUES IN CONNECTION WITH ANY GENERAL DISCUSSIONS ABOUT THE WORLD ROLE OF BRAZIL AND THE SECURITY OF THE SOUTH ATLANTIC. BRAZIL IS EMERGING AS A WORLD POWER AND AS SUCH SHOULD BE SUSCEPTIBLE TO THE ARGUMENT THAT IT HAS MORE THAN REGIONAL, BUT HEMISPHERIC AND GLOBAL ECONOMIC AND SECURITY INTERESTS. AS A NATION WITH BROAD INTERESTS, WE WOULD HOPE THAT BRAZIL COULD APPROACH THESE ISSUES IN TERMS OF AN OVERALL WORLD BALANCE OF POWER. IT WOULD BE HELPFUL IF BRAZIL COULD BE PERSUADED THAT ON BALANCE, BOTH ITS SECURITY INTERESTS AND OURS ARE BETTER SERVED BY BROAD EXERCISE OF FREEDOM OF THE HIGH SEAS AS WE BOTH HAVE CONCERNS FAR BEYOND OUR OWN COASTS. THE MORE EXPLICIT THE HINT THAT BRAZIL WOULD BENEFIT FROM
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COOPERATION WITH THE U.S. IN THE EXERCISE OF THESE FREEDOMS, THE MORE LIKELY A POSITIVE BRAZILIAN RESPONSE.

14. ACCORDINGLY, WE BELIEVE IT COULD BE ADVANTAGEOUS TO EXPLORE WITH BRAZIL ITS INTERESTS IN COOPERATING WITH THE U.S. ON OVERALL SUBMARINE DETECTION IN THE SOUTH ATLANTIC. THE PRECISE EXTENT OF U.S. WILLINGNESS TO ENGAGE IN TECHNICAL ASSISTANCE AND SHARING OF DATA REGARDING SOSUS WOULD NATURALLY BE THE SUBJECT OF LATER CONSIDERATION

AND NEGOTIATION. WE ARE CURRENTLY EXPLORING WITH DOD HOW FAR THEY MIGHT BE INTERESTED IN GOING. A TENTATIVE SUGGESTION AT THIS TIME OF THE POSSIBILITY OF COOPERATION IN THIS PARTICULAR SECURITY FIELD, IF GENUINE, MIGHT REINFORCE WITH THE BRAZILIANS THE IMPORTANCE WE ATTACH TO SATISFACTORY ACCOMMODATION OF THESE CRITICAL U.S. OBJECTIVES IN ANY LAW OF THE SEA TREATY.

15. BRAZILIAN DEMARCHE TO PERU. IN THE PAST, THERE HAS BEEN CLOSE COORDINATION OF BRAZILIAN AND PERUVIAN POSITIONS AND TACTICS AT THE CONFERENCE, AND BOTH HAVE EXERCISED ENORMOUS INFLUENCE OVER LDC PARTICIPANTS. IF BRAZIL IS TO SUCCEED IN PERSUADING THE GROUP OF 77 TO ACCEPT COMPROMISES ON THE DEEP SEABED ISSUES OR ON SCIENTIFIC RESEARCH AND INSTALLATIONS, PERU'S HARD-LINE ATTITUDE MUST ALSO BE SOFTENED. THE BRAZILIAN REPRESENTATIVE HAS INDICATED TO US HIS FEAR THAT PERU WILL ATTEMPT TO SUBVERT THE SECRET, TENTATIVE COMPROMISES WHICH WERE WORKED OUT BETWEEN THE U.S. AND BRAZIL DURING THE RECENT INTERSESSIONAL MEETINGS AND GRADUALLY SURFACED IN INFORMAL MEETINGS. TO AVOID THIS RESULT, YOU SHOULD SUGGEST TO BRAZIL THAT THEY UNDERTAKE A HIGH-LEVEL DEMARCHE TO PERU FOR THE PURPOSE OF OBTAINING PERU'S ACQUIESCENCE TO COMPROMISE SOLUTIONS DEVELOPED AND SUPPORTED BY BRAZIL. END TEXT INGERSOLL

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